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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,985	12/05/2001	Michael J. Walsh	040014-0101	1944
26371	7590	02/08/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			NICOLAS, FREDERICK C	
		ART UNIT	PAPER NUMBER	
		3754		

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/006,985	WALSH ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frederick C. Nicolas	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 December 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,7,10,11,13,15-23,25,26,36-39 and 41-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,7,11,13,15-21,23,25,26,36-39,41 and 42 is/are rejected.  
 7) Claim(s) 10,22 and 43 is/are objected to.  
 8) Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: see attached drawings.

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1-3,7,10,11,13,15-23,25,26,36-39 and 41-43.

## DETAILED ACTION

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: in claim 1, line 13, "the attachment mechanism" lacks proper antecedent basis in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3,7,11,15,36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Nottingham et al. 2002/0195471.

Nottingham et al. disclose a paint container (50), which comprises a plastic body (51) having a bottom (52), a plurality of side walls (54), and a top (86), a threaded raised neck portion (66) located proximate the top, the neck portion being offset from a center of the top of the body and defining an opening (col. 4, ll. 30-32 and as seen in Figure 3), a cap (100) configured to be secured to the neck portion, a spout (160) extending upward proximate the top and at least partially surrounded by the neck portion, the spout permitting paint to be poured from the paint container (col. 5, ll. 2-6), a handle (120) being pivotally attached to the body at two pivot points defining a pivot line

extending through the center of the top of the body (col. 5, ll. 63-81 and as seen in Figure 6), a channel (164) located between the attachment mechanism and the spout, wherein paint spilled into the channel is directed into an interior of the body (col. 5, ll. 41-50), the cap includes a periphery having a plurality of finger grip recesses located therein (col. 6, ll. 1-8).

With respect to claims 2, Nottingham et al. disclose that a channel opening adjacent the channel through which the paint flows back into the container as seen in Figure 4c.

With respect to claim 3, Nottingham et al. disclose that the spout is sized to permit entry of at least a two inch brush into the container (col. 5, ll. 11-27).

With respect to claim 7, Nottingham et al. disclose that a second handle (84) formed into one or more of the plurality of side walls.

4. Claims 16-21,23,25-26,41-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Nottingham et al. 2002/0195471.

Nottingham et al. disclose a paint container (see the attached labeled drawings of page 79 of Nottingham et al.), which comprises a body having a bottom, a plurality of side walls, and a top, a threaded raised portion extending from the top, a spout proximate the top and located within the raised portion (see labeled Figs. 1-3 for location of the threaded raised portion and spout), the spout defining a pouring direction, a first handle located proximate the side walls, a second handle pivotally secured proximate the top and attached to the body along a line perpendicular to the pouring direction, the second handle being attached directly to a portion of the body at

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pivots spaced from and independent of the raised portion as seen in Figures 1-4, a depression in the top (see Fig. 3 for location).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nottingham et al. 2002/0195471 in view of Moore 5,251,788.

Nottingham et al. have taught all the features of the claimed invention except that the cap is sized to function as a holder. Moore teaches the use of a cap (26), where the cap is being used as the product holder (col. 6, ll. 34-48).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Moore's teaching onto the device of Nottingham et al. as taught by Moore in (col. 6, ll. 34-48), in order to use the cap as a measuring cup for the contents of the container.

***Allowable Subject Matter***

7. Claims 10, 22 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments filed 12/7/2004 have been fully considered but are moot in view of the new ground(s) of rejection. Any remaining arguments have been fully addressed in the above rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
February 5, 2004

 2/5/04

Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754